

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application Serial No. 76/620,265
for the trademark "DEAN'S BEANS" published in the Official Gazette on
November 15, 2005

DEAN CYCON d/b/a DEAN'S BEANS) Opposition No. 91168248
50 R.W. Moore Avenue)
Orange, MA 01364) ANSWER TO NOTICE OF
) OPPOSITION
)

v.)

HERBAL TECHNOLOGIES, INC.)
4051 Glencoe Avenue, No. 8)
Marina Del Rey, California 90292)

Applicant.)
)

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO NOTICE OF OPPOSITION

COMES NOW THE Applicant, HERBAL TECHNOLOGIES, INC., a California
corporation (hereafter Applicant), by and through its attorney and pursuant to Rule 2.114
of the Trademark Rules of Practice and Rule 8(b) of the Fed. R. Civ. P., and for its
Answer to the Notice for Opposition (hereafter the "Opposition"), filed by DEAN
CYCON d/b/a DEAN'S BEANS (hereafter Opposer) seeking to oppose the issuance of
United States Trademark Application Serial No. 76/620,265 for "DEAN'S BEANS" for
nutritional supplements for humans, namely dietary food supplements, herbal



1 supplements, nutritional supplements, vitamin and mineral supplements, natural and food
2 supplements in International Class 5, and answers the Opposition as follows:

3 Answering the Preamble paragraph which appears on Page 1 and continues to the
4 top of Page 2 of the Opposition, Applicant responds that Opposer should have no good
5 faith belief that he will be damaged by allowance of the Applicant's mark.
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7 1. Answering Paragraph 1 of the Opposition, Applicant has insufficient
8 information and belief to admit or deny the allegations contained therein and basing its
9 denial on that ground, denies each and every, all and singular, the allegations of said
10 Paragraph 1 of the Opposition.
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12 2. Answering Paragraph 2 of the Opposition, Applicant has insufficient
13 information and belief to admit or deny the allegations contained therein and basing its
14 denial on that ground, denies each and every, all and singular, the allegations of said
15 Paragraph 2 of the Opposition.
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17 3. Answering Paragraph 3 of the Opposition, Applicant admits that there is
18 attached to the Opposition a printout of Registration 2,184,098 for "DEAN'S BEANS"
19 for use in conjunction with coffee and cocoa beans and tea bags. Except as expressly
20 admitted herein, Applicant denies each and every, all and singular, the remaining
21 allegations of said Paragraph 3 of the Opposition.

22 4. Answering Paragraph 4 of the Opposition, Applicant has insufficient
23 information and belief to admit or deny the allegations contained therein, and basing its
24 denial on that ground, denies each and every, all and singular, the allegations of said
25 Paragraph 4 of the Opposition.
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27 5. Answering Paragraph 5 of the Opposition, Applicant has insufficient
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1 information and belief to admit or deny the allegations contained therein, and basing its
2 denial on that ground, denies each and every, all and singular, the allegations of said
3 Paragraph 5 of the Opposition.
4

5 6. Answering Paragraph 6 of the Opposition, Applicant has insufficient
6 information and belief to admit or deny the allegations contained therein, and basing its
7 denial on that ground, denies each and every, all and singular, the allegations of
8 Paragraph 6 of the Opposition.

9 7. Answering Paragraph 7 of the Opposition, Applicant has insufficient
10 information and belief to admit or deny the allegations contained therein, and basing its
11 denial on that ground, denies each and every, all and singular, the allegations of
12 Paragraph 7 of the Opposition.
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14 8. Answering Paragraph 8 of the Opposition, Applicant denies each and every, all
15 and singular, the allegations of said Paragraph 8 of the Opposition.

16 9. Answering Paragraph 9 of the Opposition, Applicant has insufficient
17 information and belief to admit or deny the allegations contained therein, and basing its
18 denial on that ground, denies each and every, all and singular, the allegations of
19 Paragraph 9 of the Opposition.
20

21 10. Answering Paragraph 10 of the Opposition, Applicant denies each and every,
22 all and singular, the allegations of said Paragraph 10 of the Opposition.

23 11. Answering Paragraph 11 of the Opposition, Applicant has insufficient
24 information and belief to admit or deny the allegations contained therein and basing its
25 denial on that ground, denies each and every, all and singular, the allegations of said
26 Paragraph 11 of the Opposition.
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1 12. Answering Paragraph 12 of the Opposition, Applicant denies each and every,
2 all and singular, the allegations of said Paragraph 12 of the Opposition.

3 13. Answering Paragraph 13 of the Opposition, Applicant denies each and every,
4 all and singular, the allegations of said Paragraph 13 of the Opposition.

5 14. Answering Paragraph 14 of the Opposition, Applicant admits that Opposer
6 has correctly set forth the Applicant's goods in Application Serial No. 76/620,265.
7 Except as expressly admitted herein, Applicant denies each and every, all and singular,
8 the remaining allegations of said Paragraph 14 of the Opposition.

9 15. Answering Paragraph 15 of the Opposition, Applicant denies each and every,
10 all and singular, the allegations of said Paragraph 15 of the Opposition.

11 16. Answering Paragraph 16 of the Opposition, Applicant denies each and every,
12 all and singular, the allegations of said Paragraph 16 of the Opposition.

13 17. Answering Paragraph 17 of the Opposition, Applicant denies each and every,
14 all and singular, the allegations of said Paragraph 17 of the Opposition.

15 18. Answering Paragraph 18 of the Opposition, Applicant denies each and every,
16 all and singular, the allegations of said Paragraph 18 of the Opposition.

17 19. Answering Paragraph 19 of the Opposition, Applicant denies each and every,
18 all and singular, the allegations of said Paragraph 19 of the Opposition.

19 20. Answering Paragraph 20 of the Opposition, Applicant denies each and every,
20 all and singular, the allegations of said Paragraph 20 of the Opposition.

21 AFFIRMATIVE DEFENSES

22 FIRST AFFIRMATIVE DEFENSE

23 21. As a first, separate and distinct affirmative defense, Applicant alleges that

1 the products sold by the Opposer and the products sold by the Applicant are totally
2 different products which are sold to totally different consumers in totally different
3 channels of trade for totally different purposes. The Applicant's products are nutritional
4 supplements for humans, namely dietary food supplements, herbal supplements,
5 nutritional supplements, vitamin and mineral supplements, and natural food supplements.
6 These are sold in health food stores and in various supermarkets and other stores but
7 specifically in the vitamin and nutritional supplement section of that store. Consumers
8 seeking to purchase the Applicant's products are seeking to purchase the dietary
9 supplements for betterment of their health. In complete contrast, the Opposer's
10 registration is for coffee and cocoa beans and tea bags in International Class 30. These
11 are totally different products sold to totally different consumers in totally different
12 channels of trade. They may be sold in specialty tea and coffee houses and they may be
13 sold in the tea and coffee sections of supermarkets. However, the nature of the products
14 is totally different and has nothing whatsoever to do in any remote way with the
15 Applicant's nutritional supplements. Therefore, the products are totally different, sold to
16 totally different consumers in totally different channels of trade, and therefore, would not
17 lead to any confusion whatsoever nor any belief by any consumer that the Applicant is
18 being sponsored by the Opposer because the goods are so totally different as to have no
19 relationship whatsoever to each other.

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23 SECOND AFFIRMATIVE DEFENSE

24 22. As a second, separate and distinct defense, the Applicant alleges that the
25 Opposer has no family of marks, but simply has one registration for "DEAN'S BEANS"
26 for use in conjunction with the sale of coffee and cocoa beans and tea bags, and therefore,
27 has no reasonable ground to try to expand that use to some other unrelated class such as
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1 nutritional supplements where the Applicant is using the mark. The Opposer had no
2 reasonable expectation that no one else could use the mark for any unrelated goods and
3 Opposer has no significant quantity of trademark registrations to expand upon and argue
4 that he has a family of marks.
5

6 THIRD AFFIRMATIVE DEFENSE

7 23. As a third, separate and distinct affirmative defense, the Applicant alleges
8 that the two trademarks have a totally different meaning when used in conjunction with
9 the sale of their respective products. The Opposer is selling coffee and cocoa beans and
10 tea bags. Obviously, "DEAN'S BEANS" when used in conjunction with these products
11 simply means that the consumer is buying coffee beans from Dean. In complete contrast,
12 the Applicant's mark "DEAN'S BEANS" when used in conjunction with nutritional
13 supplements clearly implies that the purchaser is purchasing nutritional supplement pills
14 which are humorously referred to as "DEAN'S BEANS". Accordingly, the meaning of
15 Applicant's mark to a consumer is totally different than the meaning of the Opposer's
16 mark to the consumer because of the nature of the totally different products with which
17 they are sold.
18

19 FOURTH AFFIRMATIVE DEFENSE

20 24. As a fourth, separate and distinct affirmative defense, Applicant alleges
21 that since the products are so totally different, the Opposer could not possibly have lost
22 any sales to the Applicant. Someone seeking to purchase coffee or cocoa or tea has no
23 interest in purchasing nutritional supplements or no interest in purchasing nutritional
24 supplements at the same time. Similarly, someone purchasing nutritional supplements is
25 seeking a specific product which has nothing whatsoever to do with and generates no
26 interest in the purchase of coffee or tea. Accordingly, there is absolutely no loss of sales
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1 by the Opposer because the products sold by the Applicant have no relationship
2 whatsoever to the products sold by the Opposer and consumers seeking to purchase the
3 Applicant's product are not looking for the Opposer's product and conversely, consumers
4 seeking to purchase the Opposer's product are not looking for the Applicant's product.
5 They are totally different products which have nothing whatsoever to do with each other.
6

7 25. As a fifth, separate and distinct defense, the Applicant alleges that the
8 Opposition and each and every paragraph stated therein fails to state a cause of action
9 against the Applicant.

10 26. As a sixth, separate and distinct affirmative defense, Applicant alleges that
11 the Opposer has sustained no damage, injury or prejudice as a result of the Applicant's
12 application sought to be registered for "DEAN'S BEANS".
13

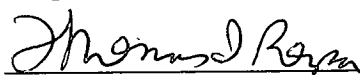
14
15 WHEREFORE, Applicant requests that the Opposition to Trademark Application
16 Serial No. 76/620,265 be denied and that the Opposer take nothing by way of its Petition.

17 If there is any fee required for filing of this Answer to Notice of Opposition, the
18 Commissioner for Trademarks is hereby authorized to charge my Deposit Account No.
19 18-2222 for the appropriate fee.
20

21 Please send all correspondence concerning this Opposition to Thomas I. Rozsa at
22 the address listed below.

23 Respectfully submitted,

24 Date: January 18, 2006


Thomas I. Rozsa
Registration No. 29,210
Attorney for Applicant
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Rozsa Law Group LC
15910 Ventura Boulevard
Encino, California 91436-2815
(818) 783-0990

CERTIFICATE OF MAILING

I hereby certify that the ANSWER TO NOTICE OF OPPOSITION,
CERTIFICATE OF SERVICE, and CERTIFICATE OF MAILING are being deposited
with the United States Postal Service with sufficient postage as Express Mail, Mail Label
No. EV 699608127 US in an envelope addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA22313-1451

Dated: January 18, 2006



Thomas I. Rozsa
Registration No. 29,210
Attorney For Applicant

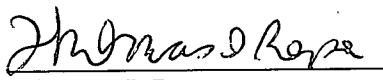
In Re Opposition No. 91168248

CERTIFICATE OF SERVICE

I hereby certify that a copy of the document entitled ANSWER TO
NOTICE OF OPPOSITION was sent on January 18, 2006 via first class mail, postage
prepaid, to the attorneys for the Opposer at the following address:

Richard D. Getz, Esq.
O'Shea, Getz & Kosakowski, P.C.
1500 Main Street
Springfield, MA 01115

Dated: January 18, 2006


Thomas I. Rozsa
Registration No. 29,210

In Re Opposition No. 91168248

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